

Arent, Fox, Kintner, Plotkin & Kahn

Federal Bar Building, 1815 H Street, N.W.
Washington, D.C. 20006
Telephone: (202) 857-6000
Cable: ARFOX Telex: WU 892672 ITT 440266

John D. Hushon
(202) 857-6290

December 30, 1981
JDH-81/398

1-364A101

13396
RECORDATION NO. Filed 1425

DEC 30 1981

50.00

Secretary,
Interstate Commerce Commission
Washington, D.C. 20423

DEC 30 1981 - 2:35 PM

INTERSTATE COMMERCE COMMISSION

ington, D. C.

Dear Sirs:

We are enclosing three original, fully executed, notarized copies of the following document between the parties listed below for recordation in accordance with 49 U.S.C. §11303.

1. Document: Mortgage and Security Agreement, dated December 30, 1981.

2. Previous Recording Data: Certain, but not all, of the railroad cars referred to in the document (SOU 780000-780119) are subject to a Lease which has previously been recorded with the ICC in File #13,331 on December 18, 1981. The Mortgage and Security Agreement incorporates a security assignment of this Lease among other things. *Cross index under Parcel #13331*

3. Parties in Interest, together with their addresses:

Equilease L.P. (a Delaware limited partnership)
("Debtor")
750 Third Avenue
New York, New York 10017
Attn: Mortimer Wimpie

and

Citibank, N.A. ("Secured Party")
450 Mamaroneck Avenue
Harrison, New York 10528
Attn: Business Credit Department

4. Railroad Car Type Designations, Descriptions and Numbers:

(a) 120-70 Ton Refrigerator Cars, AAR Mechanical Designation RBL, AAR Car Type Code R206,
Numbers: SOU 780000-780119

Barbara L. Easter
C. Owen [Signature]

Secretary,
Interstate Commerce Commission
December 30, 1981
Page Two

- (b) 250-4750 cubic foot Covered Hopper Cars with
Snubbers, AAR Mechanical Designation LO, AAR
Car Type Code L153,

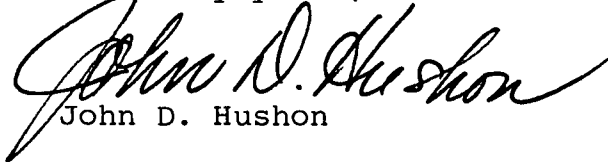
Numbers:

NAHX 487010
NAHX 487109-206
NAHX 487208
NAHX 487736-765
NAHX 487767-807
NAHX 487810-840
NAHX 487842-843
NAHX 487984-488011
NAHX 488013-030

I respectfully request that one counterpart of these documents be recorded under the provision of 49 U.S.C. §11303. I would also appreciate your stamping the additional copies of the above documents which are not required for your filing purposes and returning them to me, together with a stamped copy of this letter which is also enclosed.

The undersigned certifies that he is acting as counsel to Equilease Management Corporation, partner in Equifund L.P. and that he reviewed the above described document and that the summary description contained in this transmittal letter is accurate.

Sincerely yours,


John D. Hushon

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

12/30/81

OFFICE OF THE SECRETARY

John D. Hudson
Arent, Fox, Kintner Plotkin & Kahn
Federal Bar Building
1815 H Street, N.W.
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/30/81 at 12:35pm, and assigned re-recording number(s). 13396

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

13396
RECORDATION NO. Filed 1025

DEC 30 1981 12:35 PM

INTERSTATE COMMERCE COMMISSION

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement is made and entered into this 30th day of December, 1981, by and between EQUIFUND L.P., a Delaware limited partnership (the "Grantor"), and CITIBANK, N.A. (the "Bank").

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. For good and sufficient value received, the Grantor hereby pledges, mortgages, assigns, transfers and grants a security interest in the following collateral (the "Collateral") to the Bank to wit:

One hundred twenty (120) 70 ton RBL Type Refrigerator Cars, manufactured and reconditioned by Fruit Growers Express Company, (i) AAR Mechanical Designation RBL; (ii) AAR Car Type Code R206; (iii) Road Initials and Numbers SOU780000 to 780119 (all inclusive); and (iv) as it is intended that these cars will be subjected to a mortgage, all are legended to the following effect: "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

II. Two hundred fifty (250) 4750 cubic foot Covered Hopper Cars, with Snubbers, manufactured by Ingalls Industrial Products Division of Litton Industries, Inc., (i) AAR Mechanical Designation LO; (ii) AAR Car Type Code L153; (iii) Road Initials and Numbers NAHX 4787010, NAHX 487109 to 487206, NAHX 487208, NAHX 487736 to 487765, NAHX 487767 to 487807, NAHX 487810 to 487840, NAHX 487842, NAHX 487843, NAHX 487984 to 488011, and NAHX 488013 to 488030 (all inclusive); and (iv) as it is intended that these cars will be subjected to a mortgage, all are legended to the following effect: "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

III. All of the Grantor's right, title and interest in, to and under any leases, including the lease with Southern Railway Company dated December 18, 1981 (the "Southern Lease") covering the aforesaid RBL Type Refrigerator Cars and the lease with North American Car Corporation dated December 30,

changed by -A
478701
487010

1981 (the "NAC Lease") covering the aforesaid Covered Hopper Railcars (all such leases being the "Leases"), to which the aforesaid RBL Type Refrigerator Cars or the aforesaid Covered Hopper Railcars may now or hereafter be subject, other than amounts payable by reason of Section 15 of the Southern Lease or Section 6.02 of the NAC Lease, including without limitation:

(a) the immediate and continuing right to receive all rents, payments and indemnities under the Leases;

(b) upon a lessee's failure to make any payment or perform any required act under any Lease the right to make such payment or perform such act;

(c) the right to declare an event of default or default under any Lease; and

(d) the right to take such action upon the occurrence of an event of default or default under any Lease or an event which with notice or lapse of time or both would become an event of default or default under any Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings as shall be permitted by any Lease or by law, and to do any and all other things whatsoever that the Grantor is or may be entitled to do under the Lease upon such occurrence.

2. This Mortgage and Security Agreement is made and given by the Grantor in order to afford security to the Bank for the payment in full by the Grantor of (i) that Promissory Note (the "Note") of even date herewith from the Grantor to the Bank in the original face principal amount of approximately \$26,350,000, which Note bears interest at the rate of 17 3/4% per annum, and (ii) all other indebtedness, obligations and liabilities of whatever kind of the Grantor to the Bank, whether created directly or acquired by the Bank by assignment or otherwise, whether now existing or hereafter created or arising, absolute or contingent, joint or several, due or to become due, including but not limited to all future loans and advances made by the Bank to the Grantor.

3. The Grantor hereby warrants and represents to the Bank that:

(a) The Grantor is a duly organized and validly existing partnership, in good standing under the laws of Delaware and is duly qualified to transact business in all other jurisdictions where its business and applicable law require.

(b) The Grantor is the legal and beneficial owner of the Collateral free and clear of all liens, encumbrances and security interests except the security interest given to the Bank by this Mortgage and Security Agreement and the Leases.

(c) The Grantor has the right and power to obtain and obligate itself on the loan represented by the Note and to enter into this Mortgage and Security Agreement; and the execution and delivery of the Note and this instrument do not violate any provision of its Partnership Agreement or any term or condition of any contract or agreement to which it is a party.

(d) The acquisition of the Collateral, the loan evidenced by the Note and the execution and delivery of this instrument have all been duly and fully authorized by any and all necessary parties, and the Note and this instrument have been duly executed and delivered and both constitute valid, binding and enforceable obligations of the Grantor (but not obligations of the Grantor's general or limited partners), and the partner executing the Note and this instrument on behalf of the Grantor has been fully and properly authorized to do so.

4. The Grantor hereby covenants and agrees with the Bank that it will:

(a) If the Collateral subject to the NAC Lease is used in, leased in, or its use is permitted in Canada (or any province or territory thereof) or in Mexico (or in any state or the Federal District thereof), take all necessary action to protect the right, title and interest of the Bank in the Collateral and will furnish the Bank with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Bank to the effect that the action taken by the Grantor is all that is necessary to protect the right, title and interest of the Bank in the Collateral.

(b) Defend and protect the Collateral against all adverse claims and demands, and promptly notify the Bank in writing of any such claim or demand asserted against any of the Collateral.

(c) Mark each car forming part of the Collateral appropriately to show the Grantor's ownership and with its assigned reporting mark and number in accordance with the rules and regulations of the American Association of Railroads (A.A.R.), and the Grantor will maintain and cause the Collateral to be always so marked while this instrument remains in effect and will not, during such period, cause or allow the Collateral to be marked so as to indicate ownership in any other party or to be renumbered without the prior written consent of the Bank, nor will the Grantor allow any of the Collateral to be marked so as to indicate a lien thereon allegedly held by any party other than the Bank.

(d) Maintain the Collateral or cause the same to be maintained in good and proper working order throughout the period this instrument remains in effect, and the Collateral shall not be used for any purpose other than normal rail transportation of goods for which they are suited without the prior written consent of the Bank.

(e) Permit the Bank and its agents to inspect the Collateral and the books and records of the Grantor regarding same at any reasonable time, and from time to time, and will at all times keep track of the location of each piece of the Collateral and will promptly on request by the Bank furnish same a statement setting forth the location and condition of each car forming part of the Collateral.

(f) Pay or cause to be paid all taxes and other governmental assessments, charges and impositions levied upon the Collateral on or before the respective due dates therefor and prior to the attachment to the Collateral of any penalties or interest for the late payment. The Bank shall

have the right to demand proof of the timely payment of all such taxes and governmental charges and shall have the right, on the failure of the Grantor to so pay same, to pay all such taxes and governmental charges itself on behalf of the Grantor and the Grantor shall reimburse the Bank therefor, together with interest on the amounts so paid by the Bank at the rate of 20% per annum, payable promptly upon demand by the Bank.

(g) Pay the Note, and all principal and interest thereunder, and all other amounts owed by the Grantor to the Bank hereunder and otherwise, in full when, as and how due.

(h) Pay and reimburse the Bank for the expenses, including attorneys' fees, incurred in the preparation of this Mortgage and Security Agreement and other documents pertaining to this transaction, and for the cost of all recording and filing deemed necessary by the Bank to perfect its lien on the Collateral.

(i) Promptly notify the Bank in writing in the event any of the cars forming the Collateral are substantially damaged or destroyed as a result of any accident, calamity or other occurrence, and will assign and pay to the Bank any compensation as a result of such damage or destruction of the Collateral received under the American Association of Railroads Mechanical Interchange Rules, under any insurance policy or otherwise.

5. The Grantor hereby covenants and agrees with the Bank that it will not:

(a) Permit any other chattel mortgages, security interests, liens (other than liens which do not secure indebtedness and which arise in the ordinary course of business, are not delinquent, and do not in the aggregate materially interfere with the security interest granted hereunder) or other encumbrances to attach to any of the Collateral;

(b) Permit any of the Collateral to be seized, attached or levied upon under any legal process;

(c) Sell, lease, exchange, transfer or otherwise dispose of any of the Collateral, without the prior written consent of the Bank;

(d) Permit or suffer anything to be done, excluding normal use of the Collateral, that may in any way impair the value of any of the Collateral or the security intended to be afforded by this Mortgage and Security Agreement.

6. The Grantor will at all times maintain or cause to be maintained, at its own expense, property and casualty insurance in respect of the Collateral at the time subject hereto, at least in amounts and against risks as set forth in the Leases, or as is otherwise from time to time requested by the Bank. The proceeds of such insurance shall be payable to the Bank and the Grantor as their respective interests may appear.

The Grantor will, at all times, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance, naming the Bank as an additional named insured, at least in amounts and against risks as set forth in the Leases, or as is otherwise from time to time requested by the Bank. Any policy of insurance carried in accordance with this section shall provide that Bank shall not be obligated for any payment of premiums or commissions.

The Grantor shall obtain from each insurer under the two paragraphs immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Bank thirty (30) days' written notice before such insurer's policy shall be materially altered or cancelled or not renewed. Within 45 days after the date this Mortgage and Security Agreement is executed, and annually thereafter, on or prior to the anniversary date of such signing, the Grantor shall deliver to the Bank a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy.

7. The Grantor shall not, while the Note remains outstanding and this Mortgage and Security Agreement remains in effect, dissolve or sell substantially all of its assets, without the prior written consent of the Bank.

8. (a) Upon the occurrence of any Event of Default as defined in the Note, the Bank may, at its option and without further notice, proceed to forthwith realize upon the Collateral and all other security for the Note and the other amounts secured hereunder. On the occurrence of an Event of Default, the Bank shall have all of the rights and remedies in and against the Collateral and otherwise available under Federal law and to a secured party under the Uniform Commercial Code as adopted in the State of New York and all other applicable laws, in addition to all rights and remedies provided herein and in the Note, all of which rights and remedies shall be cumulative to the fullest extent permitted by law. Following an Event of Default, the Bank shall have the right to require the Grantor, at the latter's expense, to assemble the Collateral and make it available to the Bank at such rail points as are feasible and designated by the Bank, and the Bank may immobilize and keep from use all or any part of the Collateral, with or without proceeding to sell the Collateral or any part thereof, and shall also have the right to lease all or part of the Collateral to other parties with or without taking possession thereof. The Bank shall have the right at its discretion to sell the Collateral at public or private sale(s) in one or more lots. The Grantor will on demand by the Bank pay, as part of the indebtedness and obligations hereby secured, all amounts, including but not limited to attorneys' fees, permitted by law, with interest on all such amounts paid by the Bank at the rate of 20% per annum, incurred or paid by the Bank as expenses in taking possession of, preserving and disposing of the Collateral, including any taxes, insurance and maintenance costs incurred during such proceedings. The requirement of reasonable notice of time and place of disposition of the Collateral by the Bank shall be conclusively met if such Notice is mailed, postage prepaid, to the Grantor's last address as furnished to the Bank at least fifteen (15) days before the sale or disposition. The Bank may bid upon and purchase any or all of the Collateral at any public sale thereof. The Bank may dispose of all or any part of the Collateral in one or more lots and at one or more times and from time to time, and upon such terms and conditions,

including a credit sale, as the Bank determines in its sole discretion. The Bank may apply the net proceeds of any such disposition of Collateral or part thereof, after deducting all costs incurred in connection therewith, including the Bank's attorneys' fees and expenses incidental to preparing for sale and sale of the Collateral, and with interest thereon at the rate specified above, in such order as the Bank may elect, to the indebtedness of the Grantor secured hereunder, including but not limited to the Note, and any remaining proceeds, after all such indebtedness and other amounts due hereunder are satisfied in full, shall be paid to the Grantor or other party legally entitled thereto.

(b) Without limitation of the provisions of the foregoing paragraph, upon the occurrence and during the continuance of any Event of Default as defined in the Note, the Bank shall have the right to collect and receive all rents, payments and indemnities in respect of the Leases and to exercise all rights of the Grantor with respect to the Leases.

(c) Notwithstanding the foregoing, the Bank agrees not to interfere with a lessee's quiet enjoyment of Collateral under a lease consented to in writing by the Bank so long, but only so long, as no "Event of Default" (as defined in the lease), or event which (without the need for further notice or lapse of time) permits the lease to be terminated, has occurred and is continuing.

9. This Mortgage and Security Agreement shall extend to and include, and the Grantor hereby grants the Bank a security interest in, any proceeds (including without limitation all payments under insurance (whether or not the Bank is the loss payee thereof), or any indemnity, warranty, or guaranty, payable by reason of loss or damage to or otherwise in respect to any of such Collateral) and products of the Collateral and specifically in all per diem, mileage and other fees payable by third parties with regard to the Collateral and any rental or income derived from leasing any of the Collateral. At the request of the Bank, the Grantor will furnish the Bank complete information as to the foregoing items and the Bank shall have the right to require that all payments of such items be made directly to the Bank to be credited against the indebtedness hereby secured, and the Bank may advise the parties owing such payments of its rights under this instrument and direct such parties to make their payments to the Bank.

10. The Grantor consents to the filing of this Mortgage and Security Agreement with the Interstate Commerce Commission in order to perfect the Bank's lien on the Collateral under the provisions of 49 U.S.C.A. § 11303 (1979) (formerly Section 20c of the Interstate Commerce Act). The Grantor shall pursuant to § 4(h) hereof pay and

reimburse the Bank for all fees and charges incurred or necessary for such filing and recording.

11. (a) The Bank's acceptance of the assignment of the Leases for security shall be on the following terms: (i) the Grantor shall remain liable under the Leases to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Mortgage and Security Agreement had not been executed, (ii) the exercise by the Bank of any of the rights hereunder shall not release the Grantor from any of its duties or obligations under said Leases, and (iii) the Bank shall not have any obligations or liability under said Leases by reason of this Mortgage and Security Agreement, nor shall the Bank be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(b) Except as otherwise provided in this Mortgage and Security Agreement, the Grantor shall continue to collect, at its own expense, all amounts due or to become due the Grantor under the Leases. In connection with such collections, the Grantor may take (and, at the Bank's direction, shall take) such action as the Grantor or the Bank may deem necessary or advisable to enforce collection of the Leases; provided, however, that the Bank shall have the right at any time, upon written notice to the Grantor of its intention to do so, to direct the lessees under the Leases to make payment of all amounts due or to become due thereunder directly to the Bank and, upon such direction and at the expense of the Grantor, to enforce collection of any of the Leases in the same manner and to the same extent as the Grantor might have done. After receipt by the Grantor of the notice from the Bank referred to in the proviso to the preceding sentence, all amounts received by the Grantor in respect of the Leases shall be received in trust for the benefit of the Bank hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid over to the Bank to be held as cash collateral and either (A) released to the Grantor after payment of all amounts then due and payable, so long as no Event of Default shall have occurred and be continuing or (B) if any Event of Default shall have occurred and be continuing, applied to payment of the Note and the other amounts payable secured by this Mortgage and Security Agreements.

12. Waiver by the Grantor. To the extent permitted by law, the Grantor covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension permitted by law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision contained in Section 6 hereof, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or

hereafter made or enacted by any state or otherwise to redeem the Collateral so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, all benefit and advantage of any such law or laws, covenants that it will not invoke or utilize any such laws or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Bank, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

13. (a) Time shall be of the essence in the performance by the Grantor of all its covenants, obligations and agreements hereunder.

(b) This instrument and the agreement evidenced hereby shall, to the extent Federal law is not applicable, be governed and construed in accordance with the laws of the State of New York.

(c) This Mortgage and Security Agreement shall be binding upon the Grantor and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns. The Bank, without the consent of the Grantor, may assign the Note and its rights under this Mortgage and Security Agreement, in which event the Bank's assignee shall succeed to all of the rights of the Bank under the Note and hereunder.

14. Notwithstanding anything to the contrary contained herein or elsewhere, Citibank agrees that it will not assert, directly or indirectly, in its own name, by or on behalf of Equifund or otherwise, any claim against any limited or general partner (including without limitation Equilease Management Corporation) in Equifund for payment or performance of any duty, liability or other obligation of Equifund arising hereunder, and Citibank hereby waives any claim it may now or hereafter have against any partner in Equifund pursuant to Section 1717 of the Delaware Limited Partnership Act with respect to any returned capital contribution and agrees to repay any amount received by it constituting returned capital contributions recovered from any partner in Equifund notwithstanding the provisions of this paragraph, provided, however, that nothing herein waives or limits Citibank's rights with respect to claims for distributions to partners made in violation of covenants of Equifund.

IN TESTIMONY WHEREOF, the parties hereto have each caused this Mortgage and Security Agreement to be duly executed on their behalf the day and year first above set forth.

EQUIFUND L.P.

By: Equilease Management
Corporation

By: 

Title: Vice President

CITIBANK, N.A.

By: 

Vice President

Equilease L.P.
750 Third Avenue
New York, New York 10017
Attn: Mortimer Wimple

Citibank, N.A.
450 Mamaroneck Avenue
Harrison, New York 10528
Attn: Business Credit
Department

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 29th day of December, 1981, before me personally appeared Thomas A. OROFINO, to me known to be a Vice President of Equilease Management Corporation, the general partner of Equifund L.P. (a party to this agreement) who executed the foregoing instrument, who by me duly sworn said that said instrument was signed on behalf of said corporation in its capacity as general partner by authority of its board of directors, and he acknowledged that he executed said instrument as his free act and deed.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

JOHN B. STODOLSKY
Notary Public, State of New York
No. 30-4609935
Commission Expires March 30, 1983



Notary Public

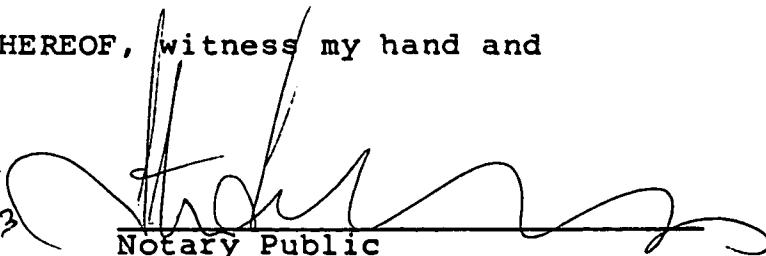
My Commission expires: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 29 day of December, 1981, before me personally appeared Robert R. Swett, to me personally known, who being by me duly sworn, says that he is a Vice President of Citibank, N.A., a national banking association, that said instrument was signed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

JOSEPH LANCE SCHWARCZ
Notary Public, State of New York
No. 30-4609935
Qualified in Nassau County
Commission Expires March 30, 1983



Notary Public

My commission expires: _____